

1 E. MARTIN ESTRADA
United States Attorney
2 LINDSEY GREER DOTSON
Assistant United States Attorney
3 Chief, Criminal Division
JASON A. GORN (Cal. Bar No. 296179)
4 Assistant United States Attorney
International Narcotics, Money Laundering,
5 And Racketeering Section
1400 United States Courthouse
6 312 North Spring Street
Los Angeles, California 90012
7 Telephone: (213) 894-7962
Facsimile: (213) 894-3713
8 E-mail: Jason.Gorn@usdoj.gov

9 Attorneys for Plaintiff
UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 CORTEZ ALEXANDER COOKE (1),

16 Defendant.

No. CR 5:24-cr-00015-KK

GOVERNMENT'S RESPONSE TO THE
COURT'S REQUEST FOR DISCOVERY

17
18 Plaintiff United States of America, by and through its counsel
19 of record, the United States Attorney for the Central District of
20 California and Assistant United States Attorney Jason Gorn, hereby
21 files this response to the Court's request for discovery. (Dkt.
22 100.)

23 //

24 //

25 //

26 //

27 //

28 //

This response is based on the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: December 13, 2024

Respectfully submitted,

E. MARTIN ESTRADA
United States Attorney

LINDSEY GREER DOTSON
Assistant United States Attorney
Chief, Criminal Division

/s/

 JASON GORN
 Assistant United States Attorney

Attorneys for Plaintiff
UNITED STATES OF AMERICA

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
I. INTRODUCTION.....	4
II. STATEMENT OF FACTS.....	5
III. RESPONSE TO THE COURT’S REQUEST.....	8
A. No Defendant Has Raised Concerns About Selective Prosecution or Requested Discovery About This Issue.....	8
B. The Rigorous Standard for Discovery Has Not Been Satisfied.....	9
IV. CONCLUSION.....	13

TABLE OF AUTHORITIES

<u>DESCRIPTION</u>	<u>PAGE</u>
<u>CASES:</u>	
<u>Berger v. United States,</u> 295 U.S. 78 (1935)	4
<u>Greenlaw v. United States,</u> 554 U.S. 237 (2008)	8
<u>United States v. Aguilar,</u> 883 F.2d 662 (9th Cir. 1989)	10
<u>United States v. Armstrong,</u> 517 U.S. 456 (1996)	passim
<u>United States v. Bourgeois,</u> 964 F.2d 935 (9th Cir. 1992)	passim
<u>United States v. Fernandez,</u> 231 F.3d 1240 (9th Cir. 2000)	11
<u>United States v. Miller,</u> 722 F.2d 562 (9th Cir. 1983)	12
<u>United States v. Rundo,</u> 108 F.4th 792 (9th Cir. 2024)	10, 11
<u>United States v. Sellers,</u> 906 F.3d 848 (9th Cir. 2018)	10
<u>United States v. Sineneng-Smith,</u> 590 U.S. 371 (2020)	3, 4, 7, 8
<u>United States v. Smith,</u> 231 F.3d 800 (11th Cir. 2000)	10
<u>United States v. Steele,</u> 461 F.2d 1148 (9th Cir. 1972)	9
<u>United States v. Turner,</u> 104 F.3d 1180 (9th Cir. 1997)	10
<u>Wayte v. United States,</u> 470 U.S. 598 (1985)	10, 12

TABLE OF AUTHORITIES (CONTINUED)

<u>DESCRIPTION</u>	<u>PAGE</u>
<u>STATUTES:</u>	
18 U.S.C. § 1951(a)	8
<u>RULES:</u>	
Fed. R. Crim. P. 12(b)(3)	9
Fed. R. Crim. P. 16(a)(2)	12

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 The Court has requested that the government produce information
4 regarding Hobbs Act robbery prosecutions in the Central District of
5 California because it has concerns that certain types of defendants
6 are being selected for prosecution. (Dkt. 100 at 1.) The government
7 takes seriously its obligation to make charging decisions without
8 consideration of race, gender, or any other protected characteristic.
9 Indeed, the government embraces its longstanding role as “the
10 representative not of an ordinary party to a controversy, but of a
11 sovereignty whose obligation to govern impartially is as compelling
12 as its obligation to govern at all[.]” Berger v. United States, 295
13 U.S. 78, 88 (1935).

14 The government, however, respectfully declines to produce the
15 information requested by the Court. For two reasons, the Court’s sua
16 sponte request for discovery is not procedurally or substantively
17 appropriate:

18 First, the Court’s sua sponte discovery request violates “the
19 principle of party presentation.” United States v. Sineneng-Smith,
20 590 U.S. 371, 375 (2020). None of the defendants in this case have
21 raised concerns about selective prosecutions or requested discovery
22 to support such a claim. To the contrary, two of the defendants have
23 already pled guilty to Hobbs Act robbery, while the third defendant
24 has expressed interest in pleading guilty via the CASA program. And
25 “as a general rule, our system is designed around the premise that
26 parties represented by competent counsel know what is best for them,
27 and are responsible for advancing the facts and argument entitling
28

1 them to relief.” Id. at 375-76 (cleaned up). There is no reason to
2 depart from that bedrock principle here.

3 Second, the Court’s sua sponte discovery request does not meet
4 the rigorous standard that applies in this context. A defendant
5 seeking discovery to support a selective prosecutive claim “must
6 present specific facts, not mere allegations, which establish a
7 colorable basis for the existence of both discriminatory application
8 of a law and discriminatory intent on the part of government actors.”
9 United States v. Bourgeois, 964 F.2d 935, 940 (9th Cir. 1992). In
10 particular, the defendant must “produce some evidence that similarly
11 situated defendants of other races [or gender or ages] could have
12 been prosecuted, but were not.” United States v. Armstrong, 517 U.S.
13 456, 469 (1996). The Court has not identified any such comparators,
14 and its “personal conclusions” and experience are insufficient to
15 order discovery regarding the government’s charging decisions. Id.
16 at 470. Accordingly, the government respectfully declines to produce
17 the requested information.

18 **II. STATEMENT OF FACTS**

19 This case stems from an ATF investigation into a string of
20 smash-and-grab robberies of jewelry stores throughout the Los Angeles
21 area. These robberies were committed using similar methods. Often a
22 maskless crew member would first approach the store, pretending to be
23 a customer, and hold open the door as the masked robbers entered the
24 store. The robbery crew, wearing hoodies and masks, would run into
25 the store carrying trash bins and hammers. The crew would then smash
26 the display cases, take jewelry, and flee.

27 On December 10, 2023, defendants committed one of these smash-
28 and-grab robberies together. That day, ATF agents were conducting

1 surveillance of two cars -- a White Mercedes C300 and a White
2 Infiniti Q50 -- that were linked to multiple prior robberies. ATF
3 agents tracked the cars to a shopping center in Temecula, California.
4 The cars traveled in tandem together for around 20 miles, entered the
5 shopping center parking lot, and then circled the victim jewelry
6 business -- Diamonds by Monet.

7 Defendant Kristian Caldwell's minor brother eventually got out
8 of the White Mercedes and entered Diamonds by Monet holding a cell
9 phone in his hand. Multiple males, who were wearing hoodies and face
10 masks, then exited the White Infiniti while carrying trash cans and
11 hammers. One masked man held the front door to the jewelry store
12 open as three others -- defendant Cortez Cooke (seen below in a red
13 and grey hoodie, grey sweatpants, and skeleton facemask), a juvenile
14 Hispanic male, and an unidentified African American man -- began
15 smashing the display cases with hammers.



1 The robbers took approximately \$130,000 in jewelry before an
2 armed employee fired upon and missed the robbers. The robbers then
3 returned to the White Infiniti. Defendant Cooke drove the White
4 Infiniti at speeds of more than 100 miles per hour as he fled law
5 enforcement, eventually ending the chase in Compton, California.
6 Cooke then got out of the car and fled on foot until law enforcement
7 detained him along with the same Hispanic juvenile who accompanied
8 defendant Cooke during the robbery. Another suspect is believed to
9 have escaped during the foot pursuit. During a search of the White
10 Infiniti, ATF agents found a trash can containing jewelry, display
11 holders, broken glass, and a pair of gloves.¹

12 Law enforcement also apprehended the occupants of the White
13 Mercedes, while it was still in the Temecula shopping center parking
14 lot. Officers arrested defendant Caldwell (the driver), defendant
15 Kahn (the front passenger), and Caldwell's juvenile brother (in the
16 rear seat). During the arrest, an ATF agent saw that both defendants
17 Caldwell and Kahn had active open calls on their cellphones that law
18 enforcement believed were used to coordinate the robbery. And the
19 ATF later obtained cell site tower data for the locations of
20 defendants Caldwell's and Kahn's cell phones and linked them to the
21 locations and times of nine other attempted or completed robberies.

22 In December 2023, the government charged defendants Cooke,
23 Caldwell, and Kahn, by complaint with one count of Hobbs Act robbery,
24 in violation of 18 U.S.C. § 1951(a). (Dkt. 1.) On January 11, 2024,
25

26 ¹ Law enforcement has linked defendant Cooke to two other
27 attempted robberies in the cities of Eastvale and Orange based on the
28 surveillance video and the matching skeleton-type facemask that
defendant Cooke wore during the instant offense. Defendant Cooke was
also placed on juvenile probation in Los Angeles County for an August
2023 robbery in Lakewood.

1 the grand jury returned an indictment for the same charge. (Dkt.
2 43.) On November 12, 2024, defendants Caldwell and Kahn pled guilty
3 to the single-count indictment pursuant to plea agreements. (Dkts.
4 96-97.) Defendant Cooke's CASA application remains pending. (Dkt.
5 100.)

6 **III. RESPONSE TO THE COURT'S REQUEST**

7 The government has carefully reviewed the Court's request for
8 discovery related to Hobbs Act robbery prosecutions in the Central
9 District of California. For the reasons explained below, however,
10 the government believes that this sua sponte discovery request is not
11 procedurally or substantively appropriate.

12 **A. No Defendant Has Raised Concerns About Selective** 13 **Prosecution or Requested Discovery About This Issue**

14 As a procedural matter, the Court's sua sponte request for
15 discovery conflicts with the principle of party presentation. The
16 Supreme Court has instructed that "we rely on the parties to frame
17 the issues for decision and assign to courts the role of neutral
18 arbiter of matters the parties present." United States v. Sineneng-
19 Smith, 590 U.S. 371, 375 (2020) (quoting Greenlaw v. United States,
20 554 U.S. 237, 243 (2008)). Courts "do not, or should not, sally
21 forth each day looking for wrongs to right. They wait for cases to
22 come to them, and when cases arise, courts normally decide only
23 questions presented by the parties." Id. (cleaned up). In short,
24 "courts are essentially passive instruments of government." Id.
25 (alteration adopted and quotation marks omitted).

26 The Court's discovery request violates that bedrock principle.
27 None of the three defendants in this case has raised any concerns
28 about selective prosecution or requested discovery about this issue.

1 To the contrary, two of the defendants -- Caldwell and Kahn -- have
2 already pled guilty to a count of Hobbs Act robbery. Through these
3 guilty pleas, they have waived the right to bring a motion to dismiss
4 based upon selective prosecution. See Fed. R. Crim. P. 12(b)(3)
5 (providing that any objection based upon "selective or vindictive
6 prosecution" must be raised "by pretrial motion"). And the third
7 defendant -- Cooke -- has expressed interest in pleading guilty via
8 the CASA program. (See Dkt. 100 at 2.)

9 Given these circumstances, the Court should not sua sponte
10 initiate an investigation into the government's charging practices.
11 All three defendants are represented by competent counsel who have
12 raised certain issues with the government -- but not selective
13 prosecution. And "as a general rule, our system is designed around
14 the premise that parties represented by competent counsel know what
15 is best for them, and are responsible for advancing the facts and
16 argument entitling them to relief." Sineneng-Smith, 590 U.S. at 375
17 (quotation marks omitted). Therefore, the Court should not order
18 discovery regarding a claim that defendants have declined to pursue.

19 **B. The Rigorous Standard for Discovery Has Not Been Satisfied**

20 As a substantive matter, the Court's sua sponte request for
21 discovery does not satisfy the rigorous standard that applies in this
22 context. Because "[t]he Attorney General and United States Attorneys
23 retain broad discretion to enforce the Nation's criminal laws," a
24 "presumption of regularity supports their prosecutorial decisions
25 and, in the absence of clear evidence to the contrary, courts presume
26 that they have properly discharged their duties." United States v.
27 Armstrong, 517 U.S. 456, 464 (1996) (cleaned up). That presumption
28 of regularity "stems from a concern not to unnecessarily impair the

1 performance of a core executive constitutional function.” Id. at
2 465. “Judicial supervision in this area, moreover, entails systemic
3 costs of particular concern. Examining the basis of a prosecution
4 delays the criminal proceeding, threatens to chill law enforcement by
5 subjecting the prosecutor’s motives and decisionmaking to outside
6 inquiry, and may undermine prosecutorial effectiveness by revealing
7 the Government’s enforcement policy.” Wayte v. United States, 470
8 U.S. 598, 607 (1985).

9 To overcome these separation-of-powers concerns and obtain
10 dismissal of criminal charges based on selective prosecution, a
11 defendant must present “clear evidence” that the government’s
12 decision to prosecute was “based on an unjustifiable standard such as
13 race, religion, or other arbitrary classification.” Armstrong, 517
14 U.S. at 464-65 (citations omitted). “Mere selectivity in prosecution
15 creates no constitutional problem.” United States v. Steele, 461
16 F.2d 1148, 1151 (9th Cir. 1972). Armstrong’s “demanding” and
17 “rigorous” standard, 517 U.S. at 463, 468, requires proof “that the
18 federal prosecutorial policy had a discriminatory effect and that it
19 was motivated by a discriminatory purpose.” Id. at 465.

20 Furthermore, to ensure that selective-prosecution claims do not
21 “divert prosecutors’ resources” and reveal “prosecutorial strategy,”
22 the Supreme Court has imposed a “correspondingly rigorous standard
23 for discovery in aid of such a claim.” Armstrong, 517 U.S. at 468.
24 A defendant seeking discovery “must present specific facts, not mere
25 allegations, which establish a colorable basis for the existence of
26 both discriminatory application of a law and discriminatory intent on
27 the part of government actors.” United States v. Bourgeois, 964 F.2d
28 935, 940 (9th Cir. 1992). And that evidence must be “solid” and

1 "credible" -- "hearsay" or "personal conclusions based on anecdotal
2 evidence" will not do. Armstrong, 517 U.S. at 468, 470; Bourgeois,
3 964 F.2d at 940. "This is a high threshold" that only "the rare
4 defendant" can meet. Bourgeois, 964 F.2d at 939. Indeed, "the
5 standard for discovery" under Armstrong is "nearly as rigorous as
6 that for proving the claim itself," because "the standard was
7 intentionally hewn closely to the claim's merits requirements."
8 United States v. Sellers, 906 F.3d 848, 852 (9th Cir. 2018).

9 The Court's sua sponte discovery request does not satisfy "[t]he
10 threshold requirement to obtain discovery" in support of a selective
11 prosecution claim. United States v. Turner, 104 F.3d 1180, 1184 (9th
12 Cir. 1997). To obtain such discovery, the law "require[s] the
13 defendant to produce some evidence that similarly situated defendants
14 of other races [or gender or ages] could have been prosecuted, but
15 were not." Armstrong, 517 U.S. at 469. The similarly situated
16 comparison or "control group" must be the same as the defendant "in
17 all relevant respects." United States v. Aguilar, 883 F.2d 662, 706
18 (9th Cir. 1989); see also United States v. Rundo, 108 F.4th 792, 801
19 (9th Cir. 2024). Lawbreakers are not "similarly situated" unless
20 they "committed the same basic crime in substantially the same
21 manner," such that their prosecutions "would have the same deterrence
22 value and would be related in the same way to the Government's
23 enforcement priorities and enforcement plan." United States v.
24 Smith, 231 F.3d 800, 810 (11th Cir. 2000).

25 The Court's sua sponte discovery request does not identify any
26 individuals -- of different races, genders, or ages -- who committed
27 similar robberies in substantially the same manner, but were not
28 prosecuted. Rather, the Court merely states that, in its experience,

1 "Hobbs Act Robbery prosecutions . . . appear to almost exclusively
2 involve defendants of a specific age, race, and gender demographic."
3 (Dkt. 100 at 1.) But the Supreme Court and the Ninth Circuit have
4 both warned that such "personal conclusions based on anecdotal
5 evidence" cannot be substituted for actual comparators. Armstrong,
6 517 U.S. at 470; accord Rundo, 108 F.4th at 800. To obtain discovery
7 regarding the government's charging practices, the defendant must
8 point to "solid, credible evidence" of discrimination, Bourgeois, 964
9 F.2d at 940, which the Court has not done.

10 Apart from this issue, the Court also requests certain documents
11 that are privileged work product. The Ninth Circuit has recognized
12 that the work product privilege shields from discovery "internal
13 government documents prepared by the U.S. Attorney in anticipation of
14 litigation." United States v. Fernandez, 231 F.3d 1240, 1247 (9th
15 Cir. 2000); see also Fed. R. Crim. P. 16(a)(2) (codifying similar
16 privilege). The first category of information requested by the Court
17 -- "[t]he Government's policies and procedures with respect to
18 prosecuting Hobbs Act Robbery cases" (Dkt. 100 at 1) -- is covered by
19 this privilege. These policies and procedures are the internal work
20 product of the government, and they were prepared in anticipation of
21 cases such as this one. And as with all of the information requested
22 by the Court, compelling their disclosure "threatens to chill law
23 enforcement by subjecting the prosecutor's motives and decisionmaking
24 to outside inquiry, and may undermine prosecutorial effectiveness by
25 revealing the Government's enforcement policy." Wayte, 470 U.S. at
26 607-08 (quotation marks omitted). As a result, the Court's request
27 for discovery is inappropriate for multiple reasons.

Ultimately, "separation of powers requires that the judiciary remain independent of executive affairs," and "[c]harging decisions are generally within the prosecutor's exclusive domain." United States v. Miller, 722 F.2d 562, 565 (9th Cir. 1983). While the government recognizes the Court's concerns about equal treatment, the Court may not invade this exclusive domain -- and order discovery regarding the government's charging practices -- unless a "high threshold" is satisfied. Bourgeois, 964 F.2d at 939. The Court's sua sponte discovery request does not meet that high threshold.

IV. CONCLUSION

For the foregoing reasons, the government respectfully declines to produce the discovery requested by the Court.